

DEPARTMENT OF STATE REVENUE
LETTER OF FINDINGS NUMBER: 06-0192P
Sales Tax
For the month of November 2005

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ISSUE

I. **Tax Administration** – Penalty

Authority: IC 6-8.1-10-2.1(d); 45 IAC 15-11-2;

The taxpayer protests the late penalty.

STATEMENT OF FACTS

The late penalty was assessed on the late filing and payment of the November sales tax return. The taxpayer was late due to the care for an elderly parent. The taxpayer was 17 days late. The taxpayer is an Indiana resident.

I. **Tax Administration** – Penalty

DISCUSSION

The taxpayer requests the penalty be abated as the care for the elderly parent caused the taxpayer to unintentional miss the due date for the sales tax return. Furthermore, the taxpayer says the taxpayer has a good compliance record for paying taxes in the past.

With regard to the compliance record, the taxpayer had an abatement of penalty for the April 2000 sales tax period. The amount of the abatement for April 2000 was over \$500. The Department does not consider the taxpayer to have a quality compliance record.

The Department does not consider the care of an elderly parent a situation that prevents the taxpayer from performing tax duties. Thus, this situation does not qualify as reasonable cause.

The regulation which controls the application of penalty is 45 IAC 15-11-2(b) which states,

Negligence, on behalf of a taxpayer is defined as the failure to use such reasonable care, caution, or diligence as would be expected of an ordinary reasonable taxpayer.

Negligence would result from a taxpayer's carelessness, thoughtlessness, disregard or inattention to duties placed upon the taxpayer by the Indiana Code or department regulations. Ignorance of the listed tax laws, rules and/or regulations is treated as negligence. Further, failure to read and follow instructions provided by the department is treated as negligence. Negligence shall be determined on a case by case basis according to the facts and circumstances of each taxpayer.

The Department finds the taxpayer was inattentive of tax duties. Inattention is negligence and negligence is subject to penalty. As such, the Department finds the penalty proper and denies the penalty protest.

FINDING

The taxpayer's penalty protest is denied.